IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 259 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

DEEPAK NITRITE LTD.

Appearance:

MR AKIL KURESHI with MR MANISH R BHATT for Petitioner
MR MANISH J SHAH for MR JP SHAH for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 23/01/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

At the instance of the revenue, the Income Tax Appellate Tribunal, Ahmedabad Bench "B" has referred the

following question of law for the opinion of this Court in respect of assessment year 1974-75 :-

"Whether on the facts and in the circumstances of the case, the Tribunal was right in coming to the conclusion that the roads inside the factory should be treated as part of the building and depreciation allowed on the same ?"

2. The assessee is a Company. It claimed depreciation on the roads costing Rs.78,740/-. The ITO rejected the claim of the assessee. On appeal, the CIT(A) treated the roads as the part of the buildings and held that depreciation should be allowed on the roads as per the rates applicable on the buildings. On further appeal filed by the revenue, the Tribunal confirmed the findings of the CIT(A). Thereupon, reference application was filed by the revenue and, therefore, the above quoted question of law has been referred to us for our opinion.

3. The learned counsel for the parties state at the Bar that the point involved in the present reference is covered by the decision of the Supreme Court in CIT vs. Gwaliar Rayon Silk Mfg. Co. Ltd., (1992) 196 ITR 149. In the above quoted decision, the Supreme Court has held that the roads and drains laid within the factory premises are necessary adjuncts to factory buildings and are to be treated as building for the purpose of depreciation.

4. In view of the decision of the Supreme Court, we are of the opinion that the Tribunal was right in coming to the conclusion that the roads inside the factory should be treated as part of the building and depreciation should be allowed on the same.

The reference is answered in the affirmative i.e. in favour of the assessee and against the revenue. The reference accordingly stands disposed of with no order as to costs.

(J.M. Panchal, J.)

(M.S. Shah, J.)

sundar/-